



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

First Named

Inventor : Jonathan R. Broek

Appln. No.: 10/657,471

Filed : September 8, 2003

For : MECHANIC'S TRACK CREEPER

Docket No.: B70.12-0001

Appeal No.

Group Art Unit: 3617

Examiner: Robert J.
McCarry, Jr.

TRANSMITTAL OF APPEAL BRIEF
(PATENT APPLICATION - 37 C.F.R. §41.37)

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I HEREBY CERTIFY THAT THIS PAPER IS BEING
SENT BY U.S. MAIL, FIRST CLASS, TO THE
COMMISSIONER FOR PATENTS, P.O. BOX 1450,
ALEXANDRIA, VA 22313-1450, THIS

11th DAY OF April, 2006.

Bryan Erickson

PATENT ATTORNEY

Sir:

Transmitted herewith is the Brief for Appellants in this
application with respect to the Notice of Appeal filed on April 3,
2006.

FEE STATUS

☒ Small entity status.

FEE FOR FILING APPEAL BRIEF

Pursuant to 37 C.F.R. §41.20(b)(2) the fee for filing the
Appeal Brief is \$250.00.

The Director is authorized to charge any additional fees
associated with this paper or credit any overpayment to Deposit
Account No. 23-1123. A duplicate copy of this communication is
enclosed.

Respectfully submitted,

WESTMAN, CHAMPLIN & KELLY, P.A.

By: *Bryan Erickson*

Bryan F. Erickson, Reg. No. 51,655
Suite 1400 - International Centre
900 Second Avenue South
Minneapolis, Minnesota 55402-3319
Phone: (612) 334-3222 Fax: (612) 334-3312

BFE/djb



AP
2/20/06

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor:	Jonathan R. Broek	Appeal No. ---
Appln. No.:	10/657,471	
Filed :	September 8, 2003	Group Art Unit: 3617
For :	MECHANIC'S TRACK CREEPER	Examiner: Robert J. McCarry, Jr.
Docket No.:	B70.12-0001	

BRIEF FOR APPELLANTS

Mail Stop Appeal Brief-Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

I HEREBY CERTIFY THAT THIS PAPER
IS BEING SENT BY U.S. MAIL, FIRST
CLASS, TO THE COMMISSIONER FOR
PATENTS, PO BOX 1450, WASHINGTON,
D.C. 20231-1450, THIS

11th DAY OF April, 2006.
Bryan Erickson
PATENT ATTORNEY

Sir:

This is an appeal from a final Office action dated February 15, 2006 in which claims 6, 10, and 11 were allowed; 9, 19, and 20 were indicated as allowable; and claims 2, 4, 5, 7, 8, and 12-18 were rejected. The appellants respectfully submit that claims 2, 4, 5, 7, 8, and 12-18 are allowable, and request that the Board reverse the rejection of these claims and find that claims 2, 4, 5, 7, 8, and 12-18 are in condition for allowance, in addition to claims 6, 9-11, 19 and 20, in light of the remarks herein.

04/18/2006 HLE333 00000015 10657471

01 FC:2402

250.00 0P

Contents

Real Party In Interest.....	3
No Related Appeals Or Interferences.....	3
Status Of The Claims.....	3
Status Of Amendments.....	3
Summary Of Claimed Subject Matter.....	4
1. Introduction.....	4
2. Brief Background.....	4
3. The Present Invention.....	6
Grounds Of Rejection To Be Reviewed On Appeal.....	6
Grouping Of Claims.....	7
Argument: Claims 2, 4, 5, 7, 8, And 12-18 Are In Condition For Allowance.....	8
1. Introduction: Claims 2, 4, 5, 7, 8, And 12-18 Are Not Rendered Obvious By Brooks And Johnson.....	8
2. The Law Of Obviousness.....	9
3. Claims 2, 4, 5, 7, 8, And 12-18 Are Not Rendered Obvious Because Brooks And Johnson Are Not From Analogous Arts.....	10
4. Claims 2, 4, 5, 7, 8, And 12-18 Are Not Rendered Obvious Because There Was No Motivation To Combine Brooks And Johnson.....	13
5. Claims 2, 4, 5, 7, 8, And 12-18 Are Not Rendered Obvious Because Brooks And Johnson Teach Away From Their Combination.....	15
6. Claims 2, 4, 5, 7, 8, And 12-18 Are Not Rendered Obvious Because Knowledge Of Johnson Is Outside The Ordinary Skill In The Art.....	16
Conclusion: Claims 2, 4, 5, 7, 8, And 12-18 Are In Condition For Allowance.....	16
Appendix: Claims On Appeal.....	18

REAL PARTY IN INTEREST

Jonathan R. Broek, an individual inventor, residing at 482 Fourth Range Rd., Pembroke, New Hampshire 03275, is the sole inventor for the present application, and has executed no assignment or other instrument affecting the application, and therefore personally retains the entire right, title and interest in and to the invention, the application, and any and all patents to be obtained therefor.

NO RELATED APPEALS OR INTERFERENCES

There are no known related appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

STATUS OF THE CLAIMS

Claims 1-20 were originally presented. Claims 1 and 3 have been canceled; no claims have been added. As of the final Office action, claims 6, 10, and 11 were allowed; claims 9, 19, and 20 were indicated as allowable; and claims 2, 4, 5, 7, 8, and 12-18 were rejected – although claims 2, 7, and 8 were previously indicated as allowable and claims 12-18 were previously allowed. The pending and rejected claims 2, 4, 5, 7, 8, and 12-18 are the subject of the present appeal.

STATUS OF AMENDMENTS

The appellants filed an amendment on February 3, 2005, in which claims 1-7, 9, 10, 12-16, and 18-20 were amended; an amendment after final on July 29, 2005 in which claims 1 and 3 were canceled, and claims 4-10 amended; and a response on November 28, 2005 in which no claims were amended or canceled. Claims 2 and 4-20 are therefore pending, of which

all but claims 11 and 17 have been amended. The claims resulting from the amendment after final of July 29, 2005 were the subject of the Office's final rejection of February 15, 2006 and are the subject of the present appeal.

SUMMARY OF CLAIMED SUBJECT MATTER

1. Introduction

The present invention relates to mechanic's creepers, and more particularly, mechanic's creepers with enhanced capabilities.

2. Brief Background

Mechanic's creepers, sometimes known to those in the art simply as creepers, have traditionally been used to facilitate performing maintenance, repair or other mechanical work in restricted work environments, such as underneath and around vehicles, structures, and other mechanical or structural objects. They provide an alternative to sliding or wriggling one's body, typically while in a reclining or supine position, along the floor or ground in a restricted space. Creepers generally comprise a platform suited for the mechanic to situate himself or herself in a reclining or supine position on the upper surface of the creeper, while the creeper is supported by a set of wheels or casters on the lower surface, providing an ability for the mechanic and creeper to translocate from one position to another. Some typical designs use swivel-mounted wheels or casters, in order to allow the creeper to translocate easily along both back-and-forth and side-to-side directions, providing for substantial freedom of motion along a substantially horizontal plane.

One typical application for usage of a creeper is to roll under a motor vehicle, for example, in order to access the vehicle's underside. This is typically done on a driveway or in a

garage, where the ground or floor is substantially smooth, allowing the creeper's wheels or casters to roll along the floor substantially unhindered.

However, many applications where the usage of a creeper is highly desired, also pose considerable difficulty to the operation of the creeper. For instance, this is the case in environments where the ground surface within which a mechanic must work is rough, rocky, gravelly, sandy, soft, or otherwise not substantially smooth and hard. Many applications for usage of a creeper necessarily incorporate conditions such as these and cannot be delayed or transferred to a garage.

This is the case, for instance, when repair or maintenance must be done on specialized motor vehicles, trucks, construction equipment, and other mechanical machines located on a construction site or other field location. In such applications, it is typically a paramount priority to complete the maintenance or repair task quickly to allow the object requiring maintenance or repair to return to functional usage, while the cost of transporting the object off-site for maintenance or repair would be prohibitive. In other cases, the creeper must be used to access the underside of a fixture, such as a deck, an affixed trailer, a rig, or a pipeline. In these applications, there is no feasible option to transfer the object being accessed to a more convenient work environment.

While usage of creepers on such rough surfaces is thus a great priority, it is also very difficult. There is particular difficulty in the operation of the creeper's wheels or casters in traversing the surface, often adding a great deal of difficulty or stress to the mechanic's task or causing the wheels or casters, or their mountings, to sink in, erode or break. New designs for creepers have therefore been introduced to try to improve their capacity to facilitate such jobs. For instance, larger wheels and mountings with reinforced strength have been introduced. However, these solutions do not ultimately alter the necessity of operating a creeper on a difficult surface.

Therefore, there persists a substantial need for an improved creeper, to cope more satisfactorily with difficult surfaces, beyond the capacity of the creepers presently known in the art. For example, there has been a particular need for creepers better suited to assist mechanics

performing maintenance or repair or other mechanical work on large vehicles such as trucks and construction equipment. There has also been a particular need for creepers better suited to provide access in, under, and around fixtures such as houses, decks, warehouses, tanks, pipelines, etc. As another example, there has been a particular need for creepers better suited to assist mechanics performing maintenance or repair or other mechanical work in difficult environments, including outdoor environments on terrain that is rough, rocky, gravelly, sandy, soft, or otherwise not substantially smooth and hard.

3. The Present Invention

Various embodiments of the present invention are directed to a creeper, including a body, and a rail interface coupled to the body, wherein the rail interface of the creeper is operatively engageable with a rail having a translational axis, wherein the rail interface of the creeper comprises a means for ensuring proper alignment of the rail interface relative to the rail, and wherein the creeper is enabled to translate along the translational axis of the rail. A variety of rail interfaces and functional features are provided that enhance the utility of the creeper and rail. These various embodiments provide novel and unexpected advantages over the previous state of the art, particularly in work environments such as construction sites and those typical of heavy work machinery.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 2, 4, 5, 7, 8, and 12-18 are patentable under 35 U.S.C. 103(a) over U.S. patent 4,895,380 issued to Brooks et al. ("Brooks") in combination with U.S. patent number 5,711,227 issued to Johnson ("Johnson").

The appellant respectfully submits that claims 2, 4, 5, 7, 8, and 12-18 are patentable over these references. The appellant asks this Board to find likewise and accordingly reverse the rejection of claims 2, 4, 5, 7, 8, and 12-18 and find these claims allowable.

GROUPING OF CLAIMS

The claims do not stand or fall together, but are grouped as follows. Each of the following groups are believed to be independently patentable, so that each group stands or falls separately:

- 1.) Claims 2, 4, 5, 7, and 12-14;
- 2.) Claim 8; and
- 3.) Claims 15-18.

ARGUMENT: CLAIMS 2, 4, 5, 7, 8, AND 12-18 ARE IN CONDITION FOR ALLOWANCE

1. INTRODUCTION: CLAIMS 2, 4, 5, 7, 8, AND 12-18 ARE
NOT RENDERED OBVIOUS BY BROOKS AND JOHNSON

Claims 2, 4, 5, 7, 8, and 12-18 ("the present claims") were rejected under §103(a) due to US patent 4,895,380 issued to Brooks et al. ("Brooks") combined with US patent 5,711,227 issued to Johnson ("Johnson"). However, the applicant maintains that Brooks and Johnson do not render claims 2, 4, 5, 7, 8, and 12-18 obvious, and asks the examiner to reconsider this rejection. In particular, each of the first three of the *Graham* factual inquiries independently argue against the finding of obviousness of claims 2, 4, 5, 7, 8, and 12-18. Specifically, Brooks and Johnson do not provide prior art the scope and contents of which would render the present claims obvious, because Johnson is not analogous art; the differences between Brooks and Johnson and the present claims are too great for the claims to be obvious, because there would have been no motivation to combine the disclosures of Brooks and Johnson, and further because Brooks and Johnson teach away from each other; and the rejection of claims 2, 4, 5, 7, 8, and 12-18 does not take into account the level of ordinary skill in the art of the present invention, because that level of skill does not include the breadth of knowledge to make the cited combination. Ultimately, the rejection of the present claims drops an overly and unstatutorily strict gate in the way of the allowance of the patentably inventive present claims. Since "[v]irtually all inventions are combinations... of old elements", *Intel Corp. v. Int'l Trade Comm'n*, 20 USPQ2d 1161, 1179 (Fed Cir. 1991) (cit. omitted), these *Graham* factor evaluations – including distinctions of non-analogous art, lack of motivation to combine references, references teaching away from each other, and properly evaluating the ordinary level of skill in the pertinent art – are of critical importance for protecting the inventive and patentable combinations of the present claims from an unfairly broad application of §103, and indicate that claims 2, 4, 5, 7, 8, and 12-18 are not obvious and should be allowed.

2. THE LAW OF OBVIOUSNESS

To determine whether a claim is obvious, the scope and contents of the prior art at the time the invention was made must first be determined. *Graham v. John Deere*, 148 USPQ 459 (S.Ct. 1966). Only references from analogous arts may be considered to evaluate obviousness. *In re Oetiker*, 24 USPQ2d 1443 (Fed. Cir. 1992). This means references that are either from the same field or that are reasonably pertinent to the particular problem to be solved, or that would have logically commended themselves to the inventor's attention in considering the problem to be solved. *In re Oetiker*; *In re Clay*, 24 USPQ2d 1443 (Fed. Cir. 1992).

Once the prior art is properly defined, the differences between the claimed invention as a whole and the prior art as a whole are evaluated. *Graham v. John Deere*; *Hodosh v. Block Drug Co., Inc.*, 229 USPQ 182 (Fed. Cir. 1986)(Rich, C.J.). This first requires construing the claims, according to the broadest reasonable meaning that the claim language would have to a person of ordinary skill in the art at the time the invention was made. *Phillips v. AWH Corp.*, 75 USPQ2d 1321 (Fed. Cir. 2005)(en banc)(Mayer, J. and Newman, J., dissenting). The test is not whether the individual differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious or not. *Stratoflex, Inc. v. Aeroquip Corp.*, 218 USPQ 871 (Fed. Cir. 1983).

This further includes three requirements to make a prima facie case for obviousness: there must have been an objective suggestion or motivation to combine the references, without impermissible hindsight; there must have been a reasonable expectation of success; and the references must have taught or suggested every limitation of an individual claim. *Hodosh v. Block Drug Co., Inc.*; *In re Vaeck*, 20 USPQ2d 1438 (Fed. Cir. 1991); *In re Royka*, 180 USPQ 580 (CCPA 1974). If an independent claim is not shown to be obvious, any claim dependent on it, because it incorporates all the limitations of the parent claim along with additional limitations, is also not be shown to be obvious. *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988).

The suggestion or motivation for the desirability of combining the elements from the references may come from either the explicit teaching of the prior art, from the general knowledge of persons of ordinary skill in the relevant art, or from issues inherent to the nature of the problem to be solved. *In re Rouffet*, 47 USPQ2d 1453 (Fed. Cir. 1998); *In re Kotzab*, 55 USPQ2d 1313 (Fed. Cir. 2000); *Ruiz v. A.B. Chance Co.*, 69 USPQ2d 1686 (Fed. Cir. 2004). Whichever of these sources of motivation is used, the motivation must be demonstrated by a factual inquiry of objective evidence and specific findings of fact; motivation cannot be resolved based on subjective belief and unknown authority. *In re Lee*, 61 USPQ2d 1430 (Fed. Cir. 2002). This proper evaluation of whether there was objective motivation to combine is particularly important because most, if not all, patentable ideas involve combination of known elements. *Intel Corp. v. U.S. Int'l Trade Comm'n*, 20 USPQ2d 1161, 1179 (Fed. Cir. 1991). Motivation to combine elements from different references does not occur where the references teach away from their combination or that would discourage a person of ordinary skill in the relevant art from considering the combination. *Ex parte Grasselli*, 231 USPQ 393 (Bd.App. 1983) *aff'd mem.* 738 F.2d 453 (Fed. Cir. 1984). Only if these conditions for a prima facie showing of obviousness are met, does the burden shift to the applicant to show that the claimed invention is not obvious. *In re Rinehart*, 189 USPQ 143 (CCPA 1976).

The ordinary skill in the art is also evaluated, to determine whether the differences between the claimed invention and the prior art would have been obvious to one of ordinary skill in the art at the time the invention was made; and any relevant secondary evidence is considered. *Graham v. John Deere*; *Hodosh v. Block Drug Co., Inc.*

3. CLAIMS 2, 4, 5, 7, 8, AND 12-18 ARE NOT RENDERED OBVIOUS
BECAUSE BROOKS AND JOHNSON ARE NOT FROM ANALOGOUS ARTS

The scope and contents defined by Brooks and Johnson would render the claims obvious, in particular, because Johnson is not from an art analogous to the present claims. A reference must either be in the field of applicant's endeavor or, if not, then be reasonably

pertinent to the particular problem with which the inventor was concerned. M.P.E.P. 2141(a); *In re Oetiker*, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). A reference is in a different field of endeavor if it teaches use in a different structure, for a different purpose, under different conditions, than the claimed invention; and a reference is not reasonably pertinent to the problem with which the inventor was concerned if a person of ordinary skill in the art would not reasonably have expected to solve the problem of the claimed invention by considering references in the art of the reference. M.P.E.P. 2141.01(a); *In re Clay*, 23 USPQ 1058 (Fed. Cir. 1992). Johnson teaches a different structure, for a different purpose, under different conditions, than the inventions of the present claims, and a person of ordinary skill in the art of the present claims would not reasonably have expected to solve the problem of the claimed invention by considering references in the art of Johnson, as elaborated below.

The Johnson reference was picked out of a non-analogous art relative either to Brooks or the present invention, rendering the combination an unfairly expansive evaluation of the scope and contents of the prior art. Specifically, Johnson is from the field of art of moving motion picture cameras steadily while filming therewith. The disparity between the field of art of Johnson, i.e. of a conveyor system for a collapsible and portable dolly system for filming movies, from the field of art of the present invention, is too great to be considered analogous.

The structure of the Johnson subject matter is very different from the structure of either Brooks or the present invention, in that it is dominated by a tripod with a movie camera perched on top thereof; it has no place where a user might reasonably be supported, and indeed is not apparently capable of supporting the weight of someone who were to try to ride on it, without being at risk of damage. The structure of the Brooks subject matter is also very different from the structure of either Johnson or the present invention, in that it is devoid of a rail. The function of Johnson is in stark contrast from that of either Brooks or the present invention, in that it is intended to carry a movie camera, rather than a human user, and in that its purpose is to allow that movie camera to shoot while in motion with a reduction in mechanical disturbances of the movie camera's tracking shot. Further, the conditions under which the Johnson subject matter is intended to be used are extremely different from the conditions under which the claimed

invention is most likely to be used. The Johnson invention is most likely to be used in a clean, carefully controlled environment, in which all activity is under the control of a director, and in which a very expensive, fragile movie camera, perched on top of a moving tripod, would not be at risk of damage. In stark contrast, the present invention is contemplated, among other uses, for use in harsh outdoor conditions, particularly including relatively hazardous and chaotic construction sites, for use on dirty, gravelly surfaces, and to pass under dirty, oily trucks, construction vehicles, and other work machines. As stated in the application, the advantages envisioned of the present invention include use in “environments where the ground surface within which a mechanic must work is rough, rocky, gravelly, sandy, soft, or otherwise not substantially smooth and hard. Many applications for usage of a creeper necessarily incorporate conditions such as these and cannot be delayed or transferred to a garage. This is the case, for instance, when repair or maintenance must be done on specialized motor vehicles, trucks, construction equipment, and other mechanical machines located on a construction site or other field location.” (Application.)

Brooks and Johnson share little if anything in common, in terms of structure, other than things having some sort of frame with wheels attached; and in terms of function, other than to facilitate motion of some thing; and in terms of conditions of use, other than some place within the realm of human activity. The disparate variety encompassed by these structures, functions, and conditions of use, define a vast, amorphous universe of subject matter, in the breadth of which it would be impossible for any mortal person to become skilled; and an invention can hardly have been obvious if no person can have been of ordinary skill in the entirety of the arts needed to provide references that disclose (assuming *arguendo* that they do) all the elements of that invention.

Johnson therefore teaches use of a portable and collapsible dolly and track having a very different structure, for a very different purpose, under very different conditions of use, than the invention of the present claims. As explained by the Court, this presents compelling evidence that Johnson is not from an analogous art to that of the present claims, and does not properly speak to whether or not the present claims are obvious under §103. Furthermore, a

person of ordinary skill in the art of the present invention would not reasonably have expected to solve the problems resolved by the claimed invention by considering references in the art of auxiliary equipment for filming motion pictures, providing further powerful evidence that Johnson is inapposite to the evaluation of the present claims under §103.

The conclusion that Brooks and Johnson are non-analogous arts, impermissible to combine for §103, is further supported by the lack of any overlap in the classifications, domestic or international, or fields of search, of the Brooks and Johnson references. This is further indicative that a person of ordinary skill in the art of either one of the two references would not have considered investigating the field of art of the other reference as an analogous or reasonably pertinent source of knowledge for a particular problem.

The fact of Johnson's non-analogy from the art of the present invention shows that the only rejection of the present claims is not sustainable. The applicant therefore respectfully requests that the Examiner withdraw this rejection and allow claims 2, 4, 5, 7, 8, and 12-18.

**4. CLAIMS 2, 4, 5, 7, 8, AND 12-18 ARE NOT RENDERED OBVIOUS
BECAUSE THERE WAS NO MOTIVATION TO COMBINE BROOKS AND JOHNSON**

The differences between Brooks and Johnson and the present claims are also too great for the claims to be obvious, because there would have been no motivation to combine the disclosures of Brooks and Johnson. Obviousness rejections must include an objective showing of specific facts to demonstrate a motivation to combine the references. *In re Lee*, 61 USPQ2d 1430 (Fed. Cir. 2002). Obviousness rejections made without this requisite showing have been consistently overturned, in a testament to the importance of this safeguard against undue exclusion of patentable inventions from the issuance of a patent. The differences between the cited references and the present claims, following the second of the *Graham* inquiries, therefore also provide an independent reason why the current obviousness rejection should be withdrawn and the present claims allowed.

In particular, there is no demonstrated suggestion or motivation to combine Brooks and Johnson, either explicitly in the references themselves, or more tenuously in the general knowledge of those in the relevant arts or in the nature of the problem to be solved. None of these possible sources of motivation to combine the two references has been demonstrated by a factual inquiry of objective evidence, as would be required to establish a showing of obviousness. The post hoc pairing of the dramatically disparate Brooks and Johnson references goes beyond any suggestion or motivation that anyone of ordinary skill in the arts of either reference would be alerted to, in staying competently informed within her own specialty. A motivation ascribed alternately to a nebulous common knowledge in the art would not fairly represent the reality of two separate fields of art, each with its own community possessing its own unique common knowledge: one community of persons with ordinary skill in the art of creepers, who might consider Brooks well-known in their art; and a separate community of persons with ordinary skill in the art of auxiliary equipment for shooting a motion picture, who might consider Johnson well-known in their art. A single individual who considered these two references from these two disparate specialties well-known, would not be a person of ordinary skill in one art or the other, but rather a person of particularly extraordinary skills across a polymathic range of arts, compared to whose talent little if anything might not be obvious. Such a standard would present an unfair and unstatutory yardstick for evaluating claimed inventions under §103.

Neither the cited references, nor the common knowledge of those in the art or the nature of the problem to be solved, include a suggestion to combine the disclosures of these two references as demonstrated by a specific factual inquiry of objective evidence. Even assuming *arguendo* that Brooks and Johnson were to disclose or suggest every element of each of the present claims between the two of them, the present claims are not shown to be obvious without such a specific fact finding that a person skilled in the art at the time of the invention of the present claims would have had a motivation to combine the teachings of these two references. Such a specific fact finding from objective evidence has not been shown. This is indicative that such a combination was in fact inventive, and deserving of being awarded a patent.

5. CLAIMS 2, 4, 5, 7, 8, AND 12-18 ARE NOT RENDERED OBVIOUS
BECAUSE BROOKS AND JOHNSON TEACH AWAY FROM THEIR COMBINATION

The differences between Brooks and Johnson and the present claims are too great for the claims to be obvious, because Brooks and Johnson teach away from each other. This provides compelling evidence that a person of ordinary skill in the art at the time the present claims were invented would not have had motivation to combine the Brooks and Johnson references. It is improper to combine references where references teach away from their combination. M.P.E.P. 2145(X)(D)(2); *In re Grasselli*, 218 USPQ 769, 779 (Fed. Cir. 1983).

As a particular example, Brooks emphasizes being properly proportioned and providing the necessary support for a mechanic. For example, Brooks points out that a hospital gurney is improperly proportioned for use by an automobile mechanic. That being said, a person of ordinary skill in the art of Brooks would likely have been motivated *a fortiori* by the teaching of Brooks to dismiss out of hand a reference teaching a structure that is all the more improperly proportioned for and incapable of supporting a mechanic, such as a dolly for a movie camera, even more so a dolly of such unusually insubstantial weight that it may be “assembled in a matter of minutes”, and portable “in a tote bag”, as taught by Brooks. Conversely, Brooks is replete with description of the suitability of the described creeper for a mechanic to recline his full weight thereon, and to manipulate gears and a hydraulic jack thereof while remaining supine upon the creeper; a person of ordinary skill in the art of auxiliary equipment for movie cameras would likely regard such teachings as unhelpful or irrelevant to a dolly with a tripod that is not intended and is not likely to admit a user reclining thereon, and further, indicative of a structure far stronger and heavier than would be required to support a mere movie camera, and precisely in opposition to the desired unusually light weight, following the teaching of Brooks.

The combination of Brooks and Johnson therefore does not properly speak to the evaluation of the non-obviousness of the present claims. On the contrary, the present claims describe a new and unobvious invention, deserving of allowance.

6. CLAIMS 2, 4, 5, 7, 8, AND 12-18 ARE NOT RENDERED OBVIOUS BECAUSE
KNOWLEDGE OF JOHNSON IS OUTSIDE THE ORDINARY SKILL IN THE ART

The rejection of claims 2, 4, 5, 7, 8, and 12-18 does not take into account the level of ordinary skill in the art of the present invention, because that level of skill does not include the breadth of knowledge to make the cited combination. The ordinary level of skill in the art of the present invention is likely to center on familiarity with the mechanical structure and function of construction vehicles and other motor vehicles, familiarity gained by experience and training that would be unlikely to include a detailed investigation of the specialized technologies of modern motion picture production. It is improper to evaluate ordinary skill of persons in the art by considering instead what would "have been obvious... to those skilled in remote arts." M.P.E.P. 2141.03; *Environmental Designs, Ltd. v. Union Oil Co.*, 218 USPQ 865, 869 (Fed. Cir. 1983), *cert. denied*, 464 U.S. 1043 (1984). Auxiliary equipment for filming motion pictures must be considered a remote art from the perspective of persons of ordinary skill in the art of creepers. Therefore, a proper adherence to the third of the *Graham* factual inquiries also, independently of the evaluation under the first two *Graham* inquiries, indicates that Johnson does not speak to the question of obviousness for the present claims.


CONCLUSION: CLAIMS 2, 4, 5, 7, 8, AND 12-18 SHOULD BE ALLOWED

At least four legal rules spanning each of the first three *Graham* inquiries independently indicate that Brooks and Johnson do not render the present claims obvious. The applicant thereby respectfully submits that the entirety of the application is now in condition for allowance, and requests that the examiner allow claims 2, 4, 5, 7, 8, and 12-18, in addition to claims 6, 9-11, 19 and 20.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

WESTMAN, CHAMPLIN & KELLY, P.A.

By: 

Bryan F. Erickson, Reg. No. 51,655
Suite 1400 - International Centre
900 Second Avenue South
Minneapolis, Minnesota 55402-3319
Phone: (612) 334-3222
Fax: (612) 334-3312

BFE

APPENDIX A: CLAIMS ON APPEAL

Claims on appeal, as they currently stand:

1. (Canceled)
2. The mechanic's track creeper of claim 7, further comprising at least a third wheel and a fourth wheel, the third wheel rotatably mounted on the body in line with the first wheel, and the fourth wheel rotatably mounted on the body in line with the second wheel and at a lateral displacement from the third wheel; wherein the third and fourth wheels are configured to operatively engage with the first and second rails; respectively, the third and fourth wheels each comprising an outwardly protruding flange on first axial ends of the third and fourth wheels, respectively, the flange of the third wheel configured such that when the third wheel is operatively engaged with the first rail, the flange of the third wheel is operatively disposed along the first side-wall of the first rail, and the flange of the fourth wheel configured such that when the fourth wheel is operatively engaged with the second rail, the flange of the fourth wheel is operatively disposed along the first side-wall of the second rail.
3. (Canceled)
4. The mechanic's track creeper of claim 7, wherein the first wheel further comprises a second outwardly protruding flange disposed on a second axial end of the wheel, axially opposing the flange on the first axial end of the wheel, the second flange configured such that when the wheel is operatively engaged with the rail, the second flange is operatively disposed along a second side-wall of the rail diametrically opposing the first side-wall of the first rail, thereby further ensuring substantially proper alignment of the first wheel relative to the rail.
5. The mechanic's track creeper of claim 7, further comprising at least a third wheel, configured to operatively engage with the first rail, the third wheel comprising an outwardly

protruding flange on a first axial end of the third wheel, the flange of the third wheel configured such that when the third wheel is operatively engaged with the first rail, the flange of the third wheel is operatively disposed along the side-wall of the first rail, thereby ensuring substantially proper alignment of the third wheel relative to the first rail.

6. A mechanic's track creeper, comprising:

a body;

a support feature disposed on an upper surface of the body, configured to support a user thereon; and

a rail interface coupled to the body, the rail interface being operatively engageable with a

first rail having a translational axis, the rail interface comprising an outwardly protruding flange disposed on a first axial end of the rail interface, the flange configured such that when the rail interface is operatively engaged with the first rail, the flange is operatively disposed along a first side-wall of the first rail, thereby ensuring substantially proper alignment of the rail interface relative to the first rail;

wherein the creeper is enabled to translate from a first position to a second position along the translational axis of the first rail;

wherein the rail interface comprises a first wheel, rotatably mounted on the body, and configured to operatively engage with the first rail, wherein the outwardly protruding flange is disposed on a first axial end of the wheel; and

wherein the rail interface also comprises a guide bar configured to slidingly contact the side-wall of the first rail when the wheel is operatively engaged with the first rail, thereby further ensuring substantially proper alignment of the first wheel relative to the first rail.

7. A mechanic's track creeper, comprising:

a body;

a support feature disposed on an upper surface of the body, configured to support a user thereon; and

a rail interface coupled to the body, the rail interface being operatively engageable with a first rail having a translational axis, the rail interface comprising an outwardly protruding flange disposed on a first axial end of the rail interface, the flange configured such that when the rail interface is operatively engaged with the first rail, the flange is operatively disposed along a first side-wall of the first rail, thereby ensuring substantially proper alignment of the rail interface relative to the first rail;

wherein the creeper is enabled to translate from a first position to a second position along the translational axis of the first rail;

wherein the rail interface comprises a first wheel, rotatably mounted on the body, and configured to operatively engage with the first rail, wherein the outwardly protruding flange is disposed on a first axial end of the wheel; and

further comprising at least a second wheel, rotatably mounted on the body at a lateral displacement from the first wheel, and configured to operatively engage with a second rail disposed at a lateral displacement from the first rail, the second wheel comprising an outwardly protruding flange on a first axial end of the second wheel, the flange of the second wheel configured such that when the second wheel is operatively engaged with the second rail, the flange of the second wheel is operatively disposed along a first side-wall of the second rail, thereby ensuring substantially proper alignment of the second wheel relative to the second rail.

8. A mechanic's track creeper, comprising:

a body;

a support feature disposed on an upper surface of the body, configured to support a user thereon; and

a rail interface coupled to the body, the rail interface being operatively engageable with a first rail having a translational axis, the rail interface comprising an outwardly

protruding flange disposed on a first axial end of the rail interface, the flange configured such that when the rail interface is operatively engaged with the first rail, the flange is operatively disposed along a first side-wall of the first rail, thereby ensuring substantially proper alignment of the rail interface relative to the first rail; and

wherein the creeper is enabled to translate from a first position to a second position along the translational axis of the first rail; and

wherein the rail interface comprises a sliding runner.

9. The mechanic's track creeper of claim 7, wherein the creeper comprises a translational locking device that comprises a user interface and a brake, configured such that the user interface is accessibly manipulable by a user situated on the support feature to selectively engage or disengage the locking device, the locking device configured such that when engaged, the locking device applies the brake against the rail, thereby substantially fixing the creeper in a first translational position along the rail; and when disengaged, the locking device allows translational freedom of motion of the creeper along the rail.
10. A mechanic's track creeper, comprising:
 - a body;
 - a support feature disposed on an upper surface of the body, configured to support a user thereon; and
 - a rail interface coupled to the body, the rail interface being operatively engageable with a first rail having a translational axis, the rail interface comprising an outwardly protruding flange disposed on a first axial end of the rail interface, the flange configured such that when the rail interface is operatively engaged with the first rail, the flange is operatively disposed along a first side-wall of the first rail, thereby ensuring substantially proper alignment of the rail interface relative to the first rail; and

wherein the creeper is enabled to translate from a first position to a second position along the translational axis of the first rail; and

wherein the body of the creeper comprises:

a lower frame, to which the rail interface is coupled;

a yaw swivel coupling, coupled to the lower frame; and

an upper frame, operatively coupled to the yaw swivel coupling, providing the capability for the upper frame to be yaw rotated about a vertical axis relative to the lower frame.

11. The mechanic's track creeper of claim 10, further comprising a rotational locking device operatively engageable between the lower frame and the upper frame; such that the upper frame remains substantially rotationally fixed relative to the lower frame when the rotational locking device is engaged, and has substantial freedom of rotation relative to the lower frame when the rotational locking device is disengaged.
12. The mechanic's track creeper of claim 14, further comprising a means for an upper surface of the body to translate substantially vertically.
13. The mechanic's track creeper of claim 14, wherein the body comprises a configurable upper surface capable of supporting a user in a relatively supine position in a first configuration, and capable of supporting a user in a relatively seated position in a second configuration.
14. The mechanic's track creeper of claim 2, wherein the first, second, third and fourth wheels each further comprise second outwardly protruding flanges on second axial ends thereof, axially opposing the first axial ends thereof; the first and second flanges of each of the first and third wheels being configured such that when the first and third wheels are operatively engaged with the first rail, the first and second flanges of the first and third wheels are operatively disposed along diametrically opposing first and second side-walls of the first rail on first and second sides of the first rail, respectively; and the first and second flanges of

each of the second and fourth wheels are configured such that when the second and fourth wheels are operatively engaged with the second rail, the first and second flanges of the second and fourth wheels are operatively disposed along diametrically opposing first and second side-walls of the second rail on first and second sides of the second rail, respectively.

15. A mechanic's track creeper, comprising:

a body;

a support feature disposed on an upper surface of the body, configured to support a user thereon;

first and second wheels, rotatably mounted to the body, at a lateral displacement to each other; and

a track, comprising first and second rails, fixed in a substantially parallel disposition at a lateral displacement relative to each other by at least one intermediate crosstie, the first and second rails having an elongated dimension defining a translational axis, wherein the first and second wheels are operatively engageable with the first and second rails, respectively, enabling the creeper to translate from a first position to a second position along the translational axis of the track; and

wherein the first and second wheels each comprise a first outwardly protruding flange disposed on a first axial end of the first and second wheels, respectively, the flanges configured such that when the first wheel is operatively engaged with the first rail, the flange of the first wheel is operatively disposed along a side-wall of the first rail, thereby ensuring substantially proper alignment of the first wheel relative to the first rail; and such that when the second wheel is operatively engaged with the second rail, the flange of the second wheel is operatively disposed along a side-wall of the second rail, thereby ensuring substantially proper alignment of the second wheel relative to the second rail.

16. The mechanic's track creeper of claim 15, further comprising at least a third wheel and a fourth wheel, the third wheel rotatably mounted on the body in line with the first wheel, and the fourth wheel rotatably mounted on the body in line with the second wheel and at a lateral displacement from the third wheel; wherein the third and fourth wheels are configured to operatively engage with the first and second rails, respectively, the third and fourth wheels each comprising an outwardly protruding flange on first axial ends of the third and fourth wheels, respectively, the flange of the third wheel configured such that when the third wheel is operatively engaged with the first rail, the flange of the third wheel is operatively disposed along the side-wall of the first rail, and the flange of the fourth wheel configured such that when the fourth wheel is operatively engaged with the second rail, the flange of the fourth wheel is operatively disposed along the side-wall of the second rail.
17. The mechanic's track creeper of claim 15, wherein the track comprises a lower surface that comprises a means for facilitating horizontal motion substantially laterally to the translational axis.
18. The mechanic's track creeper of claim 16, wherein the first, second, third and fourth wheels each further comprise second outwardly protruding flanges on second axial ends thereof, axially opposing the first axial ends thereof; the first and second flanges of each of the first and third wheels being configured such that when the first and third wheels are operatively engaged with the first rail, the first and second flanges of the first and third wheels are operatively disposed along diametrically opposing first and second side-walls of the first rail, respectively; and the first and second flanges of each of the second and fourth wheels are configured such that when the second and fourth wheels are operatively engaged with the second rail, the first and second flanges of the second and fourth wheels are operatively disposed along diametrically opposing first and second side-walls of the second rail, respectively.

19. The mechanic's track creeper of claim 15, wherein the creeper comprises a translational locking device that comprises a user interface and a brake, configured such that the user interface is accessibly manipulable by a user situated on the support feature to selectively engage or disengage the locking device, the locking device configured such that when engaged, the locking device applies the brake against the rail, thereby substantially fixing the creeper in a first translational position along the rail; and when disengaged, the locking device allows substantial translational freedom of motion of the creeper along the rail.
20. The mechanic's track creeper of claim 15, wherein the creeper comprises:
 - a lower frame; to which the rail interface is coupled;
 - a yaw swivel coupling, coupled to the lower frame; and
 - an upper frame, operatively coupled to the yaw swivel coupling, providing the capability for the upper frame to be yaw rotated about a vertical axis relative to the lower frame.